בס"ד

CHABAD LUBAVITCH OF CHAUTAUQUA

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Everyday Talmudic Ethics – Week 5 – 2020

1. *If a man gives his neighbor money or articles for safekeeping, and it is stolen from the man's house, if the thief is found, he shall pay twofold.* (Exodus 22:6)

2. **MISHNA:** …With regard to one who says to another: Tear my garment, or: break my jug, and he does so, he is liable to pay for the damage. But if he instructed him explicitly: Do so on the condition that you will be exempt from payment, he is exempt from payment.
3. If one says to another: Do so, i.e., cause damage, to so-and-so on the condition that you will be exempt from payment, and he did so, he is liable, whether the instructions were with regard to the victim himself, or whether the instructions were with regard to his property.

4. **GEMARA:** The mishna teaches that if one instructed another: Break my jug, or: Tear my garment, and the other did so, he is liable to pay for the damage.
   And the Gemara raises a contradiction from a *baraita*: The verses state with regard to bailees: "If a man delivers to his neighbor money or vessels to safeguard" (Exodus 22:6), and: "If a man delivers to his neighbor an ass, or an ox, or a sheep, or any beast, to safeguard" (Exodus 22:9). The Sages derived from these verses that the bailee is liable if the item was given to him to safeguard, but not where it was given to him to destroy; if it was given to him to safeguard, but not where it was given to him to tear… [This indicates that a bailee is not liable for damage to an item if he was told to tear it, even if the owner did not state that it is on condition to be exempt.]

5. Rav Huna said: This is not difficult, as this mishna that obligates him to pay for the damage is dealing with a case where it came into his possession, [and he was responsible for it before the owner instructed him to tear it. Therefore, even if he was instructed to tear it, he is liable]. And that *baraita*, which exempts him from paying, is discussing a case where it did not come into his possession, but he simply tore it.

6. Rabba said to Rav Huna: But the phrase in the verse "to safeguard," which obligates a bailee, indicates that it came into his possession already, and this is the case of the *baraita* that rules he is exempt.

7. Rather, Rabba said: This and that are discussing a case where it came into his possession, and it is not difficult. This mishna is discussing a case where it came into his possession as an item given for safeguarding, and he is exempt if the owner stated explicitly that this will be the case, and that *baraita* is discussing a case where it came into his possession as an item given for tearing.

(Talmud, Bava Kama 92a and 93a)

a. Forgiveness [waiving] an obligation, does not require a contractual act [Kinyan], and is binding…
(Shulchan Aruch HaRav, C.M. Dinai Mechira Umatana etc. 2)

b. **TOSAFOT:** When the item was entrusted for safekeeping, we assume that the owner was not sincere in exempting the guardian from ruining his item; he was just placating him so that he would not be concerned about being a guardian.

8. 5:11 There is another difference between the damages to an individual's physical person and to his property. If a person tells a colleague: "Blind my eye..." or "Cut off my arm, and you will not be liable," he is liable for the five assessments. The rationale is that it is well known that a person does not genuinely desire this.
When, by contrast, a person tells a colleague: "Tear my garment..." or "Break my jug, and you will not be liable," he is not liable. If, however, he did permit him to damage his property, but did not stipulate that he would not be liable, he is obligated to pay for the damages.

9. 5:12 When does the above apply? When first the person entrusted the articles to the person who destroyed them as a watchman - i.e., he borrowed them or was entrusted with them for safekeeping. In such a situation, if the owner told the watchman to break it or rip it, and the watchman did so, the watchman is liable to pay for the damages, unless the owner explicitly stipulated that the watchman would not be held liable.
When, however, the owner of an article tells a colleague: "Take this utensil and break it," "Take this garment and rip it," if the other person follows the instructions he was given, he is not liable.

10. 5:13 When a person tells a colleague: "Break a utensil belonging to so and so, and you will not be liable," and the listener follows these instructions, the listener is liable financially. It is as if he told him: "Blind so-and-so's eye, and you will not be liable."
Although the person who caused the damages is liable to pay, the person who gave him the instructions is considered to be his partner in the transgression and a wicked person. For he caused a blind man to stumble, and supported a person who committed a transgression. (Maimonides, Hilchot Chovel Umazik)

11. An article is not acquired merely through a verbal agreement. This applies even when witnesses testify that the principals have reached an agreement…. The same applies with regard to a person who gives a gift and its recipient. (Maimonides, Hilchot Mechira 1:1)

12. When a person gives a gift to a colleague, the recipient does not acquire it until he takes possession through one of the legal processes by which a purchaser takes possession of a purchase.
…A verbal statement is not sufficient. The recipient does not acquire the gift, and either one of them still has the option of retracting. (Maimonides, Hilchot Zechiya Umatana, 3:1)

13. When, by contrast, a creditor forgoes a debt to a colleague or gives him an object that previously had been entrusted to the recipient for safekeeping, such a gift is made final by a verbal statement alone. Nothing further is necessary, as we have explained. (Maimonides, Hilchot Zechiya Umatana, 3:2)

14. When a person agrees to a transaction with a verbal commitment alone, it is appropriate for him to keep his word even though he did not take any money at all, did not make a mark on the article he desired to purchase, nor leave security. If either the seller or the purchaser retracts, although they are not liable to receive the adjuration *mi shepara*, they are considered to be faithless, and the spirit of the Sages does not derive satisfaction from them. (Maimonides, Hilchot Mechira 7:8)

15. Similarly, if a person promised to give a colleague a gift and failed to do so, he is considered to be faithless.
When does the above apply? With regard to a small gift, because the recipient will depend on the promise that he was given. With regard to a large gift, by contrast, the giver is not considered to be faithless if he retracts, because the recipient does not believe that he will give him these articles until he transfers ownership through a formal *kinyan. (*Maimonides, Hilchot Mechira, *7:9)*

16. Whoever takes hold of ownerless property acquires it… [-Hefker] (ibid,, Hilchot Zechiya Umatana 1:1)

17. When a person tells a colleague: "Watch an article for me," and he tells him: "Place it down in front of me," he is an unpaid watchman. If he tells him: "Place it down before yourself," or "Place it down" without saying anything else, or tells him: "My house is before you," he is neither a paid watchman nor is an unpaid watchman, nor is he obligated to take an oath at all. (Ibid, Hilchot Sechirut 2:8)

18. Even when the owner gives permission to ruin the item, or exempts the guardian from payment, the exemption does not take effect until the damage is done. Therefore, the owner can retract from his permission to destroy, and if someone subsequently damaged it, he is liable (Responsa *Maharit, C.M.* #118).

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Today's class is sponsored by Eliana Bar-Shalom and her family in loving memory of her husband, Jerome A. Shaffer (4/2/1929 – 11/17/2016) Philosopher and Therapist.

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